

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

MONTGOMERY CARK AKERS,

Plaintiff,

v.

CASE NO. 09-3032-SAC

JAMES KESZEI, et al.,

Defendants.

O R D E R

Plaintiff, a prisoner incarcerated in the United States Penitentiary in Florence, Colorado, proceeds pro se and in forma pauperis on a Bivens<sup>1</sup> complaint filed in the United States District Court in the Southern District of New York, and then transferred by that court to the District of Kansas. On February 27, 2009, the court directed plaintiff to show cause why the complaint should not be summarily dismissed, and denied plaintiff's motion to remand this matter back to the Southern District of New York.

Before the court is plaintiff's motion for additional time to file a response to that show cause directive. The court grants this request.

Also before the court is plaintiff's notice of his interlocutory appeal from the court's denial of plaintiff's motion for remand. To appeal from such an order, certification is required

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<sup>1</sup>Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).

under 28 U.S.C. § 1292(b) for an immediate interlocutory appeal. Certification under 28 U.S.C. § 1292(b) requires a court determination that the order being appealed from "involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation...." 28 U.S.C. § 1292(b). The court finds these requirements are not met in the instant matter, and enters no certification for plaintiff's interlocutory appeal.

Plaintiff did not prepay the filing fee for his interlocutory appeal. He is currently obligated to pay the full \$350.00 district court filing fee in this action, and now must also pay the full \$455.00 appellate filing fee for his interlocutory appeal. 28 U.S.C. § 1915(b)(1). Under the circumstances, and where plaintiff's extensive litigation history in the federal courts does not appear to include three "strikes" pursuant to 28 U.S.C. § 1915(g),<sup>2</sup> the court grants plaintiff leave to proceed in forma pauperis on appeal with payment of the \$455.00 appellate filing fee to be collected as provided and authorized by 28 U.S.C. § 1915(b)(2) after plaintiff's prior fee obligations have been fully satisfied.<sup>3</sup>

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<sup>2</sup>See Akers v. Watts, 2008 WL 5206999 \*\*1-2 (D.D.C. December 12, 2008)(identifying two "strikes" against plaintiff, and noting the possibility of a third upon resolution of a pending appeal).

<sup>3</sup>As previously noted by the court, plaintiff is a prolific litigator in federal court, and has filed cases and appeals in at least fifteen different federal jurisdictions. In the District of Kansas, plaintiff is subject to paying the following prior fee obligations: Akers v. Vratil, Case No. 05-3080-GTV (\$250.00 district court filing fee); Akers v. Martin, Case No. 08-3175-SAC (\$350.00 district court filing fee and \$455.00 appellate filing

IT IS THEREFORE ORDERED that plaintiff's motion for an extension of time (Doc. 6) is granted, and that plaintiff is granted thirty (30) days from the date of this order to show cause why the complaint should not be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

IT IS FURTHER ORDERED that plaintiff is granted leave to proceed in forma pauperis on his interlocutory appeal, with payment of the \$455.00 appellate filing fee to proceed pursuant to 28 U.S.C. § 1915(b)(2) after plaintiff's prior fee obligations have been fully satisfied.

IT IS FURTHER ORDERED that the court issues no certification under 28 U.S.C. § 1292(b) for plaintiff's interlocutory appeal.

The clerk's office is to provide copies of this order to plaintiff and to the Finance Officer where plaintiff is currently confined.

**IT IS SO ORDERED.**

DATED: This 18th day of March 2009 at Topeka, Kansas.

s/ Sam A. Crow  
SAM A. CROW  
U.S. Senior District Judge

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fee); Akers v. Shute, Case No. 08-3106-SAC (\$350.00 district court filing fee); Akers v. Keszei, Case No. 09-3032-SAC (\$350.00 district court filing fee); and Akers v. Crow, Case No. 09-3037-RDR (\$350.00 district court filing fee).